

NOTICE: All slip opinions and orders are subject to formal revision and are superseded by the advance sheets and bound volumes of the Official Reports. If you find a typographical error or other formal error, please notify the Reporter of Decisions, Supreme Judicial Court, John Adams Courthouse, 1 Pemberton Square, Suite 2500, Boston, MA, 02108-1750; (617) 557-1030; SJCRreporter@sjc.state.ma.us

SJC-13107

COMMONWEALTH vs. CARSON C., a juvenile.

Worcester. September 10, 2021. - January 31, 2022.

Present: Budd, C.J., Gaziano, Lowy, Cypher, Kafker, Wendlandt,  
& Georges, JJ.

Delinquent Child. Incompetent Person, Criminal charges. Practice, Criminal, Juvenile delinquency proceeding, Arraignment, Competency to stand trial. Juvenile Court, Delinquent child. Due Process of Law, Juvenile delinquency proceeding, Competency to stand trial. Expungement.

Complaints received and sworn to in the Worcester County Division of the Juvenile Court Department on March 21 and 29, 2019.

Entry of judgments of dismissal was ordered by Anthony J. Marotta, J., and a petition for expungement was heard by him.

The Supreme Judicial Court on its own initiative transferred the case from the Appeals Court.

Taylor Henley, Committee for Public Counsel Services, for the juvenile.

Donna-Marie Haran, Assistant District Attorney, for the Commonwealth.

Timothy J. Cruz, District Attorney, & Patricia Reilly, Assistant District Attorney, for District Attorney for the Plymouth District, amicus curiae, submitted a brief.

Cristina F. Freitas, Debbie F. Freitas, & Joshua M. Daniels, for Massachusetts Association of Criminal Defense Lawyers, amicus curiae, submitted a brief.

GEORGES, J. In this case, we are asked to decide whether a Juvenile Court judge abused his discretion under G. L. c. 123, § 15 (a), or violated a juvenile's rights to due process, in denying the juvenile's motion to continue his arraignment for a competency evaluation. We also consider whether, after the juvenile was found incompetent to stand trial and the same judge dismissed all charges approximately four months after the arraignment, the judge abused his discretion in denying the juvenile's petition for expungement pursuant to G. L. c. 276, § 100K (a) (5). Discerning no error in either decision, we affirm the denials of the motion to continue and the petition for expungement.<sup>1</sup>

1. Background. The relevant facts are undisputed. In June of 2018, the juvenile, then twelve years old and in the custody of the Department of Children and Families (DCF), was living at a residential program in Barre for children who have developmental difficulties or mental illness, are on the autism spectrum, or have a history of trauma or abuse. On June 21, 2018, while riding in a school van, the juvenile allegedly

---

<sup>1</sup> We acknowledge the amicus briefs submitted by the Massachusetts Association of Criminal Defense Lawyers and the district attorney for the Plymouth district.

struck the driver with his sandal multiple times before jumping out of the van and creating a disturbance on a busy road. On March 10, 2019, when the juvenile was thirteen years old and still living at the residential program in Barre, he allegedly discharged a fire extinguisher several times in a staff conference room and sprayed the legs and feet of two staff members.

As a result of these incidents, two complaints issued against the juvenile in March of 2019. The first charged him with (1) assault and battery by means of a dangerous weapon, G. L. c. 265, § 15A (b); (2) disorderly conduct, G. L. c. 272, § 53; and (3) disturbing the peace, G. L. c. 272, § 53. The second charged the juvenile with two counts of assault and battery by means of a dangerous weapon, G. L. c. 272, § 15A (b), and two counts of vandalism, G. L. c. 266, § 126A.

On April 1, 2019, the juvenile appeared in the Juvenile Court for arraignment in both cases. Prior to arraignment, he filed a motion to continue so that he could undergo a competency evaluation, and he also filed a motion to dismiss. The juvenile argued that arraigning him despite his inability to understand the proceedings against him would deprive him of his rights to due process under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and under art. 12 of the Massachusetts Declaration of Rights. He asserted that the judge

had discretion to order a prearrest competency evaluation pursuant to G. L. c. 123, § 15 (a).

At a hearing on the motion to continue, defense counsel expressed concerns about the juvenile's competency due to his age and "his having some difficulty in our conversations." Counsel also informed the judge that several staff members at the group home also thought that a competency evaluation would be a "good idea," because they shared her concerns about the juvenile's ability "to understand what's going on." The Commonwealth orally opposed the motion; it maintained that incompetency "doesn't preclude an arraignment going forward" and that competency "can be evaluated after the arraignment."

The judge conducted colloquies first with the director of the group home and then with the juvenile. The judge asked the juvenile about his family and his school, and the juvenile responded appropriately, giving answers that contained essentially the same factual information that the director had provided about where his family was then living, where he and his family had lived before he was placed in the group home, his grade in school, and his favorite subject. The judge also asked the juvenile about the role of a judge. The juvenile responded that he did not know what a judge does or what a judge's robe means. The judge subsequently denied both the motion to continue and the motion to dismiss, arraigned the juvenile on

all charges, and ordered him released on personal recognizance with conditions. The juvenile remained in the custody of DCF and was returned to the group home.

Several months later, the juvenile was evaluated by a forensic psychologist who had been retained by the juvenile's attorney. Following this evaluation, which concluded that the juvenile was incompetent to stand trial and was unlikely to become competent within the foreseeable future, the Commonwealth moved to dismiss the charges. On August 30, 2019, the judge who had arraigned the juvenile entered findings of incompetency in both matters and dismissed all pending charges.

On the same day that the charges were dismissed, the juvenile moved for reconsideration of the denial of his motion to continue, and also filed a petition for expungement. The juvenile argued that the judge had erred in proceeding with the arraignment prior to a competency evaluation, and that this error was grounds for expungement under G. L. c. 276, § 100K (a) (5).<sup>2</sup> After a nonevidentiary hearing, the judge denied the motion for reconsideration and the petition for

---

<sup>2</sup> The juvenile argued that he was eligible for expungement because the judge's denial of his motion to continue constituted a "demonstrable error[] by [a] court employee[]." G. L. c. 276, § 100K (a) (5). Because of the decision we reach, we need not address the question whether legal error by a judge qualifies as "demonstrable error[] by [a] court employee[]."

expungement. The juvenile appealed, and we transferred the matter to this court on our own motion.<sup>3</sup>

2. Discussion. The juvenile argues that the judge erred in denying the motion for a continuance and then conducting the arraignment. The juvenile contends that the judge should have exercised the discretion afforded him under G. L. c. 123, § 15 (a), to order a competency evaluation prior to arraignment, and that arraigning him notwithstanding his "manifest" incompetency, and without any articulable safety or security concerns, violated due process. Before turning to the specifics of the juvenile's circumstances, we examine the statutory provisions governing competency evaluations and the related due process considerations.

a. Evaluation of competency under G. L. c. 123, § 15 (a).

General Laws c. 123, § 15 (a), provides:

"Whenever a court of competent jurisdiction doubts whether a defendant in a criminal case is competent to stand trial . . . , it may at any stage of the proceedings after the return of an indictment or the issuance of a criminal complaint against the defendant, order an examination of such defendant to be conducted by one or more qualified physicians or one or more qualified psychologists."

---

<sup>3</sup> Prior to filing this appeal, the juvenile filed a petition in the county court for extraordinary relief pursuant to G. L. c. 211, § 3. The single justice concluded that the juvenile had an adequate remedy in the ordinary appellate process and denied the petition.

That a competency evaluation may be ordered "at any stage" of the proceedings has been broadly construed, consistent with the plain language. See Commonwealth v. Conaghan, 433 Mass. 105, 110 (2000) (allowing order of examination for competency more than four years after defendant had pleaded guilty). To avoid undue delay in proceedings in which competency is disputed, G. L. c. 123, § 15 (a), further provides that, "[w]henever practicable, examinations shall be conducted at the court house or place of detention where the person is being held."

A judge's authority to order an evaluation under G. L. c. 123, § 15 (a), is discretionary; the provision states that a judge "may" order an evaluation if the judge becomes concerned about a defendant's competency but does not mandate such action. "While it may be useful for a judge to hear opinions from medical experts, the determination [of competency] is ultimately a legal, not a medical, judgment." Commonwealth v. Jones, 479 Mass. 1, 14 (2018). A judge therefore has the discretion to determine whether examination by a medical professional is warranted under the circumstances.

Where a defendant -- adult or juvenile -- moves to continue arraignment for an evaluation pursuant to G. L. c. 123, § 15 (a), a judge may allow the motion, or instead may choose independently to assess the defendant's competency prior to ruling on the motion. This assessment must satisfy the judge

that the defendant has sufficient mental capacity to participate in the arraignment. See Lavallee v. Justices in the Hampden Superior Court, 442 Mass. 228, 246 (2004) ("Proceedings in which a defendant cannot participate meaningfully may not be allowed to proceed"); Incompetency to Stand Trial, 81 Harv. L. Rev. 454, 454 (1967). If, after such an assessment, any doubt remains about the defendant's ability to participate, the judge may allow the motion to continue for a competency evaluation, or otherwise must conduct a balancing test, see discussion, infra, to determine whether due process permits the arraignment to go forward despite the defendant's potential incompetency.

"[A]rraignment is the judicial system's formal mechanism for providing the constitutionally prescribed description of criminal charges." Commonwealth v. Dixon, 458 Mass. 446, 456 (2010). Among other things, arraignment ensures that defendant receives fair notice of charges against him or her, a fundamental component of due process. See, e.g., Rogers v. Tennessee, 532 U.S. 451, 459 (2001) (notice is one of "core due process concepts"). Rule 7 (b) of the Massachusetts Rules of Criminal Procedure, as appearing in 461 Mass. 1501 (2012), for instance, directs a judge at arraignment to (1) "read the charges to the defendant in open court," (2) "enter the defendant's plea to the charges," (3) "inform the defendant of all warnings and advisories required by law," and (4) "determine

the conditions of the defendant's release, if any." Because arraignment is a limited proceeding, the inquiry into competency at arraignment need not be as comprehensive as an evaluation of competency to stand trial. Cf. Matter of a Juvenile, 485 Mass. 831, 835 (2020) ("The trial is the pivotal truth-seeking event, so the capacity of the defendant or juvenile to communicate and assist counsel at that stage in the proceedings is a cornerstone of due process"); Commonwealth v. Torres, 441 Mass. 499, 504 (2004) ("the limited and fact-specific nature of the inquiry at a bail hearing renders some procedural protections unnecessary as a matter of due process"). For purposes of arraignment, a defendant must have the ability to understand the general concept that a criminal case has been initiated against him or her; the roles of the prosecutor, defense counsel, and judge; the nature of the specific charges the defendant is facing; and any conditions of release imposed. See Mass. R. Crim. P. 7; State v. Cadorette, 2003 VT 13, ¶¶ 4-5.

In a case involving a juvenile, a more searching inquiry into competency prior to arraignment may be justified. Due to age and immaturity alone, a juvenile may lack the ability to "understand legal jargon, the legal process, the charges against him [or her], and the weight of legal decisions." Berryessa & Reeves, *The Perceptions of Juvenile Judges Regarding Adolescent Development in Evaluating Juvenile Competency*, 110 J. Crim. L. &

Criminology 551, 560 (2020). Age aside, studies suggest that "[u]pwards of [seventy] percent of justice-involved youth have at least one diagnosable mental illness, nearly half have a substance use disorder, and at least [seventy-five] percent have experienced traumatic victimization." Feye, Keator, Phillippi, & Irons, *Caring for Youth with Behavioral Health Needs in the Juvenile Justice System: Improving Knowledge and Skills of the Professionals Who Supervise Them*, National Center for Youth Opportunity and Justice, at 2 (Jan. 2020), <https://ncyoj.policyresearchinc.org/img/resources/CaringforYouthwithBehavioralHealthNeedsinJJ-946799.pdf> [<https://perma.cc/BM8N-GHCE>]. Thus, a judge faced with a potentially incompetent juvenile might well benefit from the opinion of a medical expert in assessing the juvenile's competency prior to arraignment.

Finally, as the principal aim of our juvenile justice system is rehabilitation, a judge should err on the side of caution in deciding whether to exercise judicial discretion under G. L. c. 123, § 15 (a), with respect to a juvenile. See Commonwealth v. Magnus M., 461 Mass. 459, 461 (2012). The Legislature has mandated that "the care, custody and discipline of the children brought before the court shall approximate as nearly as possible that which they should receive from their parents, and that, as far as practicable, they shall be treated, not as criminals, but as children in need of aid, encouragement

and guidance." G. L. c. 119, § 53. Ordering a prearrest competency evaluation by a medical professional may, in certain circumstances, align most with the over-all mission of the Juvenile Court.

b. Due process considerations. Due process under both the Fourteenth Amendment and art. 12 prohibits the "trial, conviction, or sentencing of a person charged with a criminal offence while he [or she] is legally incompetent." Commonwealth v. Hill, 375 Mass. 50, 51-52 (1978), quoting Commonwealth v. Vailes, 360 Mass. 522, 524 (1971). Where there exists a "substantial question of possible doubt" as to a defendant's competency, a "judge must, on his [or her] own initiative, conduct a full hearing on the issue." Hill, supra at 54, quoting Rhay v. White, 385 F.2d 883, 886 (9th Cir. 1967). The judge's determination rests on "whether [the person] has sufficient present ability to consult with his [or her] lawyer with a reasonable degree of rational understanding -- and whether [the person] has a rational as well as factual understanding of the proceedings against him [or her]." Vailes, supra, quoting Dusky v. United States, 362 U.S. 402, 402 (1960).

This standard safeguards both the accuracy and fairness of criminal trials. A defendant must be "sufficiently coherent to provide his [or her] counsel with information necessary or relevant to constructing a defense. Otherwise, [for example,]

if only the defendant knew of exonerating circumstances, he [or she] might be erroneously convicted." *Incompetency to Stand Trial*, 81 Harv. L. Rev. at 457. A defendant also must have "some awareness of the significance of the proceeding and some ability to understand the charges against him [or her], the defenses available . . . and the basic elements of a criminal trial." *Id.* at 458. Without this capacity, a defendant would be unable to exercise control over important decisions such as how to plead and whether to dismiss an attorney with whom the defendant is dissatisfied. See *id.*

A finding of incompetency, however, "does not require the cessation of all pretrial proceedings" (emphasis added). *Abbott A. v. Commonwealth*, 458 Mass. 24, 27 (2010). See *Jackson v. Indiana*, 406 U.S. 715, 740-741 (1972); *Torres*, 441 Mass. at 502. Due process is a "'flexible' concept that 'calls for such procedural protections as the particular situation demands.'" *Torres, supra*, quoting *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976). In this vein, we have held that it is not a per se violation of due process to proceed with a bail hearing pursuant to G. L. c. 276, § 57, in a case where a defendant has been found incompetent to stand trial. See *Torres, supra* at 507. Likewise, due process permits "a hearing under [G. L. c. 276, § 58A,] to determine an incompetent person's

dangerousness, regardless [of] whether the person is an adult defendant or a juvenile." Abbott A., supra at 33.

In reaching these determinations, we balanced "the private interest that will be affected by the pretrial proceeding, the Commonwealth's interest in the outcome of the proceeding, and the risk that the [individual]'s incompetency during the proceeding will erroneously deprive [the individual] of his [or her] liberty." Abbott A., 458 Mass. at 28. We observed that, both at bail hearings and dangerousness hearings, a defendant's or juvenile's interest at stake -- "freedom from restraint pending trial" -- is "significant." See id. at 28, 30 (dangerousness); Torres, 441 Mass. at 503 (bail). We concluded, however, that "in each of these cases, the alternative of staying the proceedings until the defendant or juvenile regained competency would have thwarted the strong governmental interest in assuring the defendant's appearance for trial or in protecting the public from the danger posed by the defendant." Matter of a Juvenile, 485 Mass. at 836.

With respect to the risk of erroneous deprivation of a defendant's or a juvenile's liberty interests, "we [have] distinguished between two types of error: factual and strategic." Matter of a Juvenile, 485 Mass. at 837. The risk of factual error at a bail hearing, for example, is the risk that a defendant's incompetency "will result in . . . bail being

set at a meaningfully higher level than it would be if he [or she] were competent," Torres, 441 Mass. at 503-504, while the risk of factual error at a dangerousness hearing is "the risk that a judge will erroneously determine that no conditions of release will reasonably assure the safety of any other person or the community." Abbott A., 458 Mass. at 31. Because of the procedural protections provided at these types of hearings, the risk of factual error at either hearing is not "so substantial as to violate due process." Id. at 31-32. See Torres, supra at 504-505.

The risk of strategic error "is greatest at trial," where a defendant faces the consequential decision of whether to proceed with a trial rather than plead guilty -- a decision that "may substantially affect the severity of a defendant's sentence on conviction." Abbott A., 458 Mass. at 29. At bail and dangerousness hearings, the risk of strategic error is comparatively low, "because the defendant's or juvenile's interests are clear (to obtain his [or her] release on conditions and avoid a finding of dangerousness), the hearing cannot be waived (because the Commonwealth bears the burden of proving dangerousness by clear and convincing evidence), and the defendant or juvenile almost never testifies." Matter of a Juvenile, 485 Mass. at 838, quoting Abbott A., supra at 33.

While due process does not require the cessation of bail and dangerousness hearings postarraignment where a defendant is incompetent, Abbott A., 458 Mass. at 27, we have yet to address a key question at issue here: whether due process permits the arraignment of an incompetent defendant or juvenile. At the outset, we note that an individual's interests at stake at arraignment differ categorically from the interests at stake at a bail hearing or a dangerousness hearing. At both of those stages, criminal or delinquency proceedings already have begun, and the individual already has an established criminal record. Arraignment, by contrast, is the initiation of criminal or delinquency proceedings. Arraignment creates an entry on a juvenile's court activity record information (CARI) record and on an adult defendant's criminal offender record information report. See Commonwealth v. Humberto H., 466 Mass. 562, 572 (2013).

As we have recognized, "the creation of a CARI record may adversely affect a juvenile," Humberto H., 466 Mass. at 573, regardless of the outcome of the proceeding, for many years and potentially throughout the child's life. See Commonwealth v. Preston P., 483 Mass. 759, 769 (2020) ("stigma and [detrimental] collateral consequences associated with a delinquency adjudication . . . attach[] when the initial charges [are] brought"); Commonwealth v. Hanson H., 464 Mass. 807, 816 (2013)

("avoidance of attaching the stigma of a criminal to the child is of great importance" [citation omitted]). Although a CARI is not a public record, it is "accessible to the justices and probation officers of the courts, to the police commissioner for the city of Boston, to all chiefs of police and city marshals, and to such departments of the state and local governments as the commissioner [of probation] may determine." G. L. c. 276, § 100. Thus, "[a] juvenile delinquency record -- even just an arraignment -- can . . . be used to enhance future sentencing or affect charging or probation decisions." Commonwealth v. Manolo M., 486 Mass. 678, 686 (2021).

Considering the ramifications of criminal and delinquency records, the interests of a defendant or juvenile in avoiding arraignment are significant.<sup>4</sup> The stakes may be viewed as akin

---

<sup>4</sup> In addition to its impact on any subsequent court proceedings, a juvenile record may lead to "difficulty accessing educational services, obtaining employment, serving in the military, and finding and maintaining housing." Coleman, Expunging Juvenile Records: Misconceptions, Collateral Consequences, and Emerging Practices, United States Department of Justice, Juvenile Justice Bulletin, at 1 (Dec. 2020). See Boston Globe Media Partners, LLC v. Chief Justice of the Trial Court, 483 Mass. 80, 96 (2019) (noting long-term consequences of criminal record on access to employment and housing). Some colleges and universities deny financial aid to students with juvenile records, while others deny admission. See Radice, The Juvenile Record Myth, 106 Geo. L.J. 365, 387 (2018). To minimize the harmful consequences of criminal and delinquency records, the Legislature has enacted several statutes that allow pretrial diversion prior to arraignment. The purpose of these statutes is to "allow the individual to participate as a productive member of society, without incurring the serious

to those at a transfer hearing under G. L. c. 119, § 72A, where the court has discretion to discharge a defendant and end the prosecution altogether. See Matter of a Juvenile, 485 Mass. at 838. If a case is dismissed prearraignment due to a defendant's incompetency, the case leaves no trace. But if an incompetent defendant is arraigned, and the case is dismissed postarraignment, the record remains, as do the collateral consequences.

We are cognizant, also, that while the individual interests at stake at arraignment invariably are strong, the strength of the government's interest will vary from case to case. In some cases, the defendant or juvenile may be a flight risk or pose a threat to public safety. A judge can address these concerns without arraigning the individual by imposing prearraignment conditions of release during the pendency of the competency proceeding. See Commonwealth v. Newberry, 483 Mass. 186, 198 (2019). Occasionally, however, the concerns are so serious that the individual must be detained pretrial or, if released,

---

collateral consequences (and concomitant difficulty in productive participation) that may arise from a criminal record." Commonwealth v. Newberry, 483 Mass. 186, 196 (2019). In particular, the Legislature explicitly has stated that a juvenile eligible for pretrial diversion under G. L. c. 119, § 54A (b), "shall not be arraigned and an entry shall not be made into the criminal offender record information system" (emphasis added).

released on bail.<sup>5</sup> In such circumstances, the government may have a strong interest in immediate arraignment so that a bail hearing or dangerousness hearing can be held. See Abbott A., 458 Mass. at 30; Torres, 441 Mass. at 503. By contrast, where an individual presents no safety or flight concerns, the government's interest in arraignment prior to a competency hearing may be minimal.<sup>6</sup>

---

<sup>5</sup> We do not agree with the Commonwealth's assertion that its interest in arraigning the juvenile stemmed from the need to "create an accurate record of what has transpired" so as ultimately to "bring the juvenile to trial." Regardless of whether an incompetent juvenile is arraigned, the Commonwealth cannot "try the [juvenile] and bring the offender to justice until the [juvenile] becomes competent," see Matter of a Juvenile, 485 Mass. at 839, if the juvenile ever does attain competency. Where an individual is not likely to become competent in the reasonably foreseeable future, maintaining an open criminal proceeding violates that individual's due process rights. See Sharris v. Commonwealth, 480 Mass. 586, 593 (2018).

<sup>6</sup> As the amicus Massachusetts Association of Criminal Defense Lawyers points out, pretrial detention is rarely requested in cases in the Juvenile Court. In the 2020 fiscal year, for example, of the more than 7,000 applications for criminal complaints filed in the Juvenile Court, the Commonwealth sought pretrial detention under G. L. c. 276, § 58A, in less than three percent. Compare Trial Court, Department of Research and Planning, Applications for Delinquent Complaint (2020), <https://public.tableau.com/app/profile/drap4687/viz/MassachusettsTrialCourtApplicationsforDelinquentComplaint/SummaryCaseInitiation>, with Trial Court, Department of Research and Planning, Dangerousness Hearings (2020), <https://public.tableau.com/app/profile/drap4687/viz/MassachusettsTrialCourtDangerousnessHearings/MainDashboard>. And fewer than ten percent of the complaints led to detention for any reason, including bail and probation violations. See Department of Youth Services (DYS), Annual Report: Fiscal Year 2020, at 4, <https://www.mass.gov/doc/dys-annual-report-fy-2020/download> [<https://perma.cc/G64Q-9JDR>] (reporting 765 youths

In sum, to determine whether arraignment of an incompetent defendant would violate due process, the key question to be resolved is whether the defendant's interests in avoiding arraignment while incompetent outweigh the Commonwealth's interests in having the defendant arraigned. Where safety and flight concerns cannot be mitigated by the imposition of prearraignment conditions of release, arraignment of an incompetent defendant or juvenile may be justified, notwithstanding the strong individual interests implicated. Where safety concerns and the risk of flight are low, and the defendant or juvenile has no prior criminal record, the calculus might be different, given the individual's interests in avoiding the consequences of a criminal record or CARI.

c. Application. At the time of his arraignment, the juvenile had not been evaluated for competency to stand trial by a court or a clinician. Rather, the juvenile's attorney raised the issue of competency at the outset of the arraignment proceeding, where she asserted that she had concerns about the juvenile's "ability to understand what's going on."

As discussed, once advised of these concerns, the judge had an obligation to assess the juvenile's competency prior to

---

were admitted to DYS in fiscal year 2020). Thus, the balancing of individual and government interests in a case involving a juvenile often will favor the juvenile.

moving forward with the arraignment, or else to order an evaluation of the juvenile's competency by "one or more qualified physicians or . . . qualified psychologist." See G. L. c. 123, § 15 (a). The judge chose the former course and evaluated the juvenile's competency by conducting colloquies with the director of the juvenile's group home and the juvenile. These colloquies implicitly satisfied the judge that the juvenile was competent.

The director of the group home informed the judge that the juvenile was in seventh grade but could not say whether that was the appropriate grade level for him, as he attended school at a different location. She also explained that the juvenile was receiving therapy for emotional issues. She did not mention any difficulties the juvenile might have had with intellectual functioning; prior to the colloquy, however, the juvenile's attorney told the judge that staff members at the group home believed that the juvenile should be evaluated for competency.

In response to the judge's questions, the juvenile said that he was thirteen; that his family was living in Roanoke, Virginia, where he had visited them; and that he previously had lived with his family in Lynn. The judge then asked the juvenile, "Do you know what my job is?" and "Do you know what this means when I wear this [robe]?" The juvenile responded, respectively, "Not really" and "No." When the judge asked the

juvenile, "What do you think I do?" the juvenile answered, "I don't know." The juvenile then told the judge that he was in seventh grade and that he liked math and science. When the judge asked what kind of math the juvenile did in school, the juvenile said, "just division."

We review a judge's determination of competency for abuse of discretion. See Commonwealth v. Hung Tan Vo, 427 Mass. 464, 468-469 (1998). In doing so, "we must give weight to the judge's opportunity to observe the defendant's demeanor." Commonwealth v. Russin, 420 Mass. 309, 317 (1995). See Commonwealth v. Goldman, 12 Mass. App. Ct. 699, 708 (1981) (in deciding whether to conduct competency hearing, "weight must be afforded to the trial judge's first-hand opportunity to observe the defendant throughout the trial"). That a defendant's statements are responsive to the circumstances supports a judge's finding of competency. See Commonwealth v. DeMinico, 408 Mass. 230, 236 (1990), quoting Hill, 375 Mass. at 58 ("defendant's demeanor at trial and response[s] to questioning by the judge . . . [are] relevant to a decision on the merits of the competency issue").

In the circumstances here, we cannot say that the judge abused his discretion in implicitly concluding that the juvenile was competent and denying the motion to continue the arraignment. On the record before the judge at the time of the

arraignment, the juvenile demonstrated that he could recount information about his life accurately and could answer questions appropriately. Although the juvenile lacked knowledge about the role of a judge and was not asked about the nature of the charges or the roles of the attorneys, the juvenile did not demonstrate any gross intellectual deficits during the colloquy that suggested that he was incompetent.

The conclusion that there was no abuse of discretion in finding the juvenile competent forecloses the juvenile's due process claims. Our jurisprudence makes clear that a judge must engage in a due process balancing test prior to conducting a pretrial proceeding only if the defendant or juvenile is legally incompetent. See Matter of a Juvenile, 485 Mass. at 834; Abbott A., 458 Mass. at 26; Torres, 441 Mass. at 500. As the judge in this case determined that the juvenile was not incompetent, no due process balancing was required. Because there was no violation of due process, the juvenile was not eligible for expungement under G. L. c. 276, § 100K (a) (5), and thus there was no abuse of discretion in the denial of the juvenile's petition for expungement.

3. Conclusion. The orders denying the motion for a continuance and denying the petition for expungement are affirmed.

So ordered.